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[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 344.]

**7. Trial (§ 296 (3)\*)—Erroneous Instruction Not Cured by Correct Instruction.**—Where plaintiff's instruction incorrectly stated the liability of the carrier, the fact that a correct instruction was given at the instance of the carrier will not cure the error.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 745.]

Error to Circuit Court, Louisa County.

Proceeding by motion by J. W. Beard against Walker D. Hines, Director General of Railroads. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

*D. H. & Walter Leake*, of Richmond, for plaintiff in error.  
*W. Worth Smith, Jr.*, of Louisa, for defendant in error.

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WALKER *v.* TEMPLE.

June 23, 1921.

[107 S. E. 720.]

**1. Limitation of Actions (§ 48 (2)\*)—Warrant of Attorney to Confess Judgment "at Any Time" Held Not to Accelerate Statute.**—Where contract for the payment of money at a designated date contained a power of attorney authorizing a designated attorney to confess judgment thereon "at any time from the date hereof, whether this obligation is payable or not," the statute of limitations (Code 1919, § 5810) did not begin to run until the creditor had a right, independent of the power of attorney, to bring an action on his demand under the contract; that is, the date when the amount was payable under the contract, notwithstanding the fact that the debtor or his agent might confess judgment on the claim "at any time" prior to that date.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 389.]

**2. Judgment (§ 41\*)—Clerk Held a "Court" within Warrant of Attorney to Confess Judgment.**—A power of attorney to confess judgment on a contract "in any court" authorizes confession of judgment before the clerk of the court, under Code 1904, § 3283 (Code 1919, § 6130), his proceedings in vacation being reviewable by the court at the next term under section 3293 (Code 1919, § 6140).

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 518. For other definitions, see Words and Phrases, First and Second Series, Any.]

Error to Circuit Court, Brunswick County.

Action by one Temple against one Walker. Judgment for

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

plaintiff by confession set aside, and judgment rendered for plaintiff on summons served, and defendant brings error. Order setting aside judgment by confession annulled, and judgment rendered on service of summons. Reversed.

*B. A. Lewis*, of Lawrenceville, for plaintiff in error.

*Geo. M. Raney* and *Buford & Peterson*, all of Lawrenceville, for defendant in error.

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STALLARD *v.* COMMONWEALTH.

June 28, 1921.

[107 S. E. 722.]

**1. Burglary (§ 42 (3)\*)—Evidence Held Sufficient to Warrant a Conviction.**—In a prosecution for feloniously entering a barn and stealing property therefrom, evidence of finding the stolen property near defendant's house, together with other proof, held sufficient to warrant a conviction.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 661.]

**2. Criminal Law (§ 1159 (3)\*)—Verdict on Conflicting Evidence Not Disturbed.**—A conviction based on conflicting evidence will not be disturbed by the appellate court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

**3. Burglary (§ 42 (1)\*)—Larceny (§ 64 (1)\*)—Possession of Stolen Goods Not Prima Facie Evidence of Housebreaking or Larceny.**—The possession of stolen goods is of itself not even prima facie evidence of housebreaking or larceny.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 661.]

**4. Burglary (§ 64 (6)\*)—Possession of Stolen Goods with Inculpatory Circumstances May Establish Crime.**—When goods have been obtained by means of a burglary or housebreaking, the fact of possession by the defendant, together with inculpatory circumstances, such as the refusal of defendant to give an account of his possession, or his giving of a false account, is sufficient to warrant conviction.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 661.]

**5. Indictment and Information (§ 191 (2)\*)—In Prosecution for Entering a Barn and Stealing Property, Jury May Convict of Larceny.**—In a prosecution for entering a barn and stealing property therefrom, the jury may convict of larceny alone; larceny being necessarily involved.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 794.]

**6. Burglary (§ 46 (7)\*)—Instruction on Recent Possession Not Erroneous.**—In a prosecution for entering a barn and stealing prop-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.